

Exhibit A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re: : Chapter 11
: :
LEHMAN BROTHERS HOLDINGS INC., *et al.*, : Case No. 08-13555 (SCC)
: :
Debtors. :
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**ALTERNATIVE DISPUTE RESOLUTION PROCEDURES
ORDER IN CONNECTION WITH CLAIMS HELD BY LEHMAN
BROTHERS HOLDINGS INC. REGARDING EXCESS PAYMENTS
RECEIVED BY CLAIMANTS ON ACCOUNT OF GUARANTEE CLAIMS**

Upon the motion, dated August 31, 2020 (the “**Motion**”) [ECF NO. 60863],¹ of Lehman Brothers Holdings Inc. (“**LBHI**” or “**Plan Administrator**”), as Plan Administrator, for the establishment of alternative dispute resolution (“**ADR**”) procedures with respect to LBHI’s Excess Payment Claims against the Excess Payment Recipients (the “**Excess Payment ADR Procedures**”) in the Chapter 11 Cases of LBHI and its affiliated debtors, all as more fully described in the Motion, and upon the Objection (“**Mizuho Objection**”) [ECF No. 60881] to the Motion filed by Mizuho Securities Co., Ltd. (“**Mizuho**”), it is:

HEREBY FOUND AND DETERMINED that:²

A. The Court has jurisdiction to enter this Order as the matter has a close nexus to the chapter 11 cases and the *Modified Third Amended Joint Chapter 11 Plan of Lehman Brothers Holdings Inc. and Its Affiliated Debtors* (the “**Plan**”), confirmed by Order dated December 6, 2011 (the “**Confirmation Order**”). Pursuant to Paragraph 77 of the Confirmation Order and Section 14.1 of the Plan, the Court retained jurisdiction over the matter. Venue in this Court for the Motion

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

² Pursuant to Bankruptcy Rule 7052, findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact, where appropriate.

any hearing on the unresolved issues relating to the Mizuho Objection is adjourned without date, with the Plan Administrator and Mizuho reserving all rights and defenses relating to the unresolved issues raised in the Mizuho Objection.

1. Standing Mediation Order. All provisions of the General Order M-452, adopted June 28, 2013, providing for the Adoption of Procedures Governing Mediation of Matters and the Use of Early Neutral Evaluation and Mediation/Voluntary Arbitration in Bankruptcy Cases and Adversary Proceedings in the Bankruptcy Court for the Southern District of New York, and all existing and further amendments thereto (the “**Standing Order**”) shall apply to the mediations to be conducted under this Order. To the extent there is any conflict between the Standing Order and this Order, the terms of this Order shall govern.

2. Excess Payment Recipients. To date, LBHI has identified over 50 Excess Payment Recipients involving more than \$17 million against whom there is reasonable cause for LBHI to believe that it holds Excess Payment Claims. To the extent an Excess Payment Recipient intends to argue that it does not have liability to return Excess Payments because it was a conduit that passed on the Excess Payment to one or more third parties, such third party recipients of such Excess Payment shall also be considered Excess Payment Recipients for purposes of the Excess Payment ADR Procedures and shall be required to cooperate fully in the Excess Payment ADR Procedures. The Excess Payment Recipient that asserts that it was a conduit is directed to forward this Order to those third parties that it asserts are the recipients of the Excess Payments, and such forwarding shall constitute judicial notice to such recipients.

3. Excess Payment ADR Disputes. LBHI will designate a dispute (an “**Excess Payment ADR Dispute**”) as to any Excess Payment Claim by serving the following on an Excess Payment Recipient:

5. Pre-Mediation Stage Confidentiality. All discussions between the parties and the contents of any papers submitted prior to the Mediation Stage (as defined herein) shall remain confidential and privileged in accordance with Paragraph [12] of this Order and shall not be discoverable or admissible as evidence in any subsequent litigation of the Excess Payment ADR Dispute or elsewhere, except as provided by further order of this Court.

a. Compliance with the Excess Payment ADR Procedures in this Order is mandatory

in the specified Excess Payment ADR Disputes for both LBHI and the Excess Payment Recipient; and

- b. No party is required to settle or compromise any dispute or enter into a particular settlement or compromise. However, once LBHI serves an Excess Payment ADR Package upon an Excess Payment Recipient, the Excess Payment Recipient must serve the required responses. LBHI and the Excess Payment Recipient must also engage in the specified communications to discuss settlement, participate in any mediation in good faith, follow the directions of the mediator, and otherwise comply with the Excess Payment ADR Procedures specified below for all Excess Payment ADR Disputes covered by such notice.

NOTICE/RESPONSE STAGE

7. Notice/Response. The initial stage of the Excess Payment ADR Procedures will be a notice/response stage, providing the parties with an opportunity to exchange settlement offers, schedule settlement meetings or conference calls, and, if possible, resolve an Excess Payment ADR Dispute on a consensual basis (the “**Notice/Response Stage**”). The Notice/Response Stage shall include:

- a. Excess Payment ADR Notice. LBHI shall serve upon an Excess Payment Recipient a notice containing sufficient information regarding the Excess Payment ADR Dispute to make the Excess Payment Recipient aware of the nature of LBHI’s affirmative claim and of its demand for settlement, including an amount of monetary recovery LBHI would accept in full settlement and compromise (an “**Excess Payment ADR Notice**”).
- b. Excess Payment Recipients’ Response to Notice. A Excess Payment Recipient

must respond to the Excess Payment ADR Notice in writing through a “Statement of Position” within twenty (20) calendar days from the date of service of the Notice. The response options available to an Excess Payment Recipient are as follows (the “**Responses**”):

- i. Agreeing to Settle the Demand. If an Excess Payment Recipient agrees to settle the demand in the Excess Payment ADR Notice, the Excess Payment Recipient shall state in writing that the offer of settlement in the Excess Payment ADR Notice is accepted. The parties will then execute a settlement and general release (including a confidentiality provision) and, if the matter is in litigation or other contested matter, LBHI shall dismiss any applicable claims in a lawsuit or adversary proceeding with prejudice upon execution of the release and receipt of the settlement payment; or
- ii. Denying the Demand. An Excess Payment Recipient may decline to settle for the amount stated in the demand in the Excess Payment ADR Notice, in which case the Excess Payment Recipient must include a brief explanation in the Response to the Excess Payment ADR Notice setting forth the reason(s) for such denial. In addition, the Excess Payment Recipient may provide a counteroffer to the demand in the Excess Payment ADR Notice, in which case the Excess Payment Recipient must include a brief explanation setting forth the reason(s) for such counteroffer.
- c. Failure to Respond. Failure to provide a timely Response to the Excess Payment ADR Notice, as described in Paragraphs [7](b)(i) and (ii), may result, at the option of LBHI, in an application to the Court for Sanctions as set forth below, including

fees and costs, termination of the mediation and, at LBHI's discretion, institution of an action against the Excess Payment Recipient, or immediate entry into the mediation stage.

- d. Reply to Response. LBHI shall have fifteen (15) days from the date of the receipt of the Response to serve a reply to the Response to the Excess Payment ADR Notice, in which LBHI may (i) modify its demand, (ii) respond to any counteroffer, (iii) provide additional information or briefing in support of its demands in the Excess Payment ADR Dispute, or (iv) reject any counteroffer in which case the Excess Payment ADR Dispute will automatically proceed to the Mediation Stage. If LBHI fails to respond within this period, the Excess Payment ADR Dispute will automatically proceed to the Mediation Stage.

8. Request for Initial Settlement Conference. At any time in the Notice/Response Stage, either LBHI or an Excess Payment Recipient may request an initial telephonic settlement conference by written request, to be held within five (5) calendar days. Within two (2) calendar days of a receipt of such a request, the other parties must respond by acceptance of one of the proposed dates and times or by a proposal for an initial settlement call no later than five (5) calendar days from the earliest date set forth in the written request. If an acceptable date cannot be achieved through this process, the parties shall immediately proceed to the Mediation Stage. At least one hour shall be reserved for the initial conference to discuss settlement. No mediator or representative of the Court will participate in this discussion, but the initial conference call specified in this Paragraph, together with any continuations or rescheduled settlement calls or meetings arising from that initial settlement conference, will be covered by Rule 408 of the Federal Rules of Evidence and analogous state evidentiary provisions; the confidentiality provisions of

9. Mediation. Excess Payment ADR Disputes that are not resolved through the Notice/Response Stage will proceed to mediation (the “**Mediation Stage**”).

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- ## **OTHER PROVISIONS**

11. Sanctions for Parties. LBHI and each Excess Payment Recipient must participate in good faith with these Excess Payment ADR Procedures with regard to the ADR Disputes specified in the applicable Excess Payment ADR Notice. If, after notice and a hearing, the Court determines that LBHI or the Excess Payment Recipient have not complied with the Excess Payment ADR Procedures in good faith in connection with any Excess Payment ADR Dispute, LBHI or the Excess Payment Recipient may be subject to such sanctions as the Court deems

13. Removal. If an Excess Payment Recipient commences any action or proceeding in any other court or forum following service upon it of an Excess Payment ADR Package, LBHI may seek to remove to this Court any such lawsuit, proceeding, or claim and to defend or take

15. Fees. Except as otherwise provided herein, each party to the Mediation shall bear its own costs and counsel fees in connection with Mediation and share equally in the reasonable fees and costs charged by the Mediator.

October 5, 2020
New York, New York

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